Supreme Court, U.S.
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No._____

In The
Supreme Court of the United States
October Term, 1995

PHILADELPHIA TRIBUNE COMPANY
and
BARBARA FAGGINS,

Petitioners,

v.

GLENN ARTHUR BROWN,

Respondent.

Petition for a Writ of Certiorari to the Pennsylvania Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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102 pp

QUESTION PRESENTED FOR REVIEW

Did the Pennsylvania appellate courts err in concluding that an individual who was the subject of a widely disseminated, government issued press release alleging that he had misused public funds, was not a limited-purpose public figure and therefore did not have to prove actual malice in a defamation action against a media defendant who reported that public controversy in a newspaper article?

PARTIES TO THE PROCEEDINGS

The named petitioners in the Pennsylvania Supreme Court as well as here are the Philadelphia Tribune Company and Barbara Faggins. The Philadelphia Tribune Company is a Pennsylvania corporation and has no wholly-owned subsidiaries. The named respondent in the Pennsylvania Supreme Court and here is Glenn Arthur Brown.

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OPINIONS BELOW

The opinions of the Philadelphia trial court are unreported and are included as A-1 and A-18 in the Appendix

hereto. The opinion of the Pennsylvania Superior Court is reported at 447 Pa. Super. 52, 668 A.2d 159 (1995), it is also included as A-50 in the Appendix hereto. The Order of Pennsylvania Supreme Court affirming the Superior Court is included as A-64 in the Appendix hereto.

JURISDICTIONAL STATEMENT

This petition seeks a review of the April 16, 1996 Order of the Pennsylvania Supreme Court denying discretionary review of a judgment of the intermediate Pennsylvania Superior Court denying petitioners' appeal. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 2104 which confers on this Court jurisdiction to review the judgment and orders of the Pennsylvania appellate courts on matters of federal constitutional law.

CONSTITUTIONAL PROVISIONS

The First Amendment to the United States

Constitution which contains the freedom of the press provision, provides:

> " Congress shall make no law...abridging the freedom of speech, or of the press....."

Section I of the Fourteenth Amendment to the United States Constitution incorporates this provision and applies it to the states:

> ...nor shall any state deprive any person of life, liberty, or property, without due process of law .... "

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

This Petition arises out of a Pennsylvania common law defamation and false light invasion of privacy action that was filed in a Pennsylvania state court of original jurisdiction in Philadelphia by Glenn Arthur Brown ("Respondent") against the Philadelphia Tribune Company and one of its reporters, Barbara Faggins (collectively referred to hereinafter as

"Petitioners"). The action resulted from a newspaper article published on January 24, 1986 in *The Philadelphia Tribune* newspaper (the *Tribune* is owned by petitioner, the Philadelphia Tribune Company), which was headlined "West Philadelphia Dentist Charged With Fraud." (A-65). The article reported that the respondent, a doctor of dental medicine, was the subject of investigations by the Pennsylvania Auditor General and the Pennsylvania Department of Public Welfare which resulted in a conclusion by the Auditor General that the respondent had submitted 19 false claims to the Medical Assistance Program of the Pennsylvania Department of Public Welfare for payment for the provision of dental services to low income individuals.

The Auditor General is an elected Pennsylvania state official with the statutory responsibility to audit and report on the expenditure of all public funds in the state. The Auditor General issued an official government press release on the respondent's alleged misuse of public funds. (A-67). The

press release stated that the matter was being referred to the Attorney General of the State of Pennsylvania and the District Attorney of the City of Philadelphia for further investigation. The press release was widely distributed throughout the state of Pennsylvania to the media and to the general public.

The *Tribune* received a copy of the press release and the executive editor of the *Tribune* assigned the matter to Barbara Faggins ("Faggins"). Faggins reviewed the press release and conducted a series of interviews with the respondent and with Pennsylvania state officials who were knowledgeable about the contents of the press release and the investigations. When Faggins initially contacted the respondent, he denied having any knowledge that he was being investigated by the various state agencies. He also denied that he was even responsible for billing activities in his dental office. Faggins then called the Auditor General's office who confirmed that not only was the respondent aware of the investigations, but that a lengthy audit had taken place

in his office. Further the billing clerk in the respondent's dental office told Faggins that the respondent handled his own claims for Medical Assistance Program payments. When Faggins confronted the respondent with these facts, he admitted that he knew of the investigations and that he handled his own billings, but denied that he had done anything improper.

Faggins reported and fairly summarized the contents of the press release in the newspaper article. The article was based primarily on information contained in the press release and interviews. In fact, much of the contents of the article were taken verbatim from the press release. Accordingly, because of its newsworthiness and interest to the public concerning these public agency investigations of the alleged misuse of public funds, the *Tribune* published the article which gave rise to the present action.

Respondent alleged in his complaint that three separate statements in the article defamed him: (1) the headline which

stated that respondent was "charged with fraud"; (2) the first sentence in the article which stated that respondent "faces criminal charges"; and (3) a quotation attributed to a staff member of the Auditor General's office that respondent engaged in "unscrupulous conduct."

B. PROCEDURAL HISTORY

This action was tried before a state court jury from March 10-15, 1992. Prior to trial, petitioners raised the federal constitutional issue presented in this petition in a trial memorandum seeking to have the trial judge rule as a matter of law that the dispute between the respondent and the various public agencies was a public controversy and that the respondent was a limited-purpose public figure who must prove actual malice to prevail in this action. The trial judge ruled that the controversy was indeed a public one, but inexplicably and erroneously held that the respondent was a private individual. During the trial, the respondent presented no evidence of actual malice on the part of petitioners. In

fact, respondent did not even present evidence of simple negligence. At the close of respondent's case in chief, petitioners moved for a compulsory nonsuit or directed verdict and again raised their limited-purpose public figure argument, both of which were denied by the trial judge. On March 15, 1992, the jury rendered a verdict in favor of the respondent and assessed damages in the amount of $750,000.

On March 16, 1992, petitioners filed a Motion for Post-trial Relief seeking a new trial or in the alternative judgment notwithstanding the jury verdict. The issue of the respondent's status as a limited purpose public figure was again presented in this motion. On November 11, 1994, the trial judge denied petitioners' post-trial motions and reaffirmed the earlier ruling that the respondent was not a limited-purpose public figure. (A-18).

On March 7, 1995, petitioners appealed the trial judge's decision to the Pennsylvania Superior Court and raised, *inter alia*, the issue presented here. The Superior

Court affirmed the lower court in a decision rendered on November 24, 1995. (A-50). Petitioners filed a petition for *allocatur* to the Pennsylvania Supreme Court on December 18, 1996, seeking that court's discretionary review of the Superior Court's order and decision. The issue of the respondent's status as a limited-purpose public figure was presented in this appeal. On April 16, 1996, the Pennsylvania Supreme Court, in a *per curiam* order, denied the petition for discretionary review. (A-64).

REASONS FOR ALLOWANCE OF THE WRIT

I. The Pennsylvania appellate courts in deciding that the respondent was not a limited-purpose public figure under the facts presented here have decided an important question of federal constitutional law that has not been, but should be, settled by this Court. Further, the rulings of the Pennsylvania appellate courts are in conflict with the decisions of several federal courts of appeal on this issue.

Under this Court's decision in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974), a private individual may

become a limited-purpose public figure by "injecting himself or being drawn into a particular public controversy" sufficiently to become a "public figure for a limited range of issues." As to the issues relating to that public controversy, such an individual cannot prevail in a defamation action unless he proves actual malice, by clear and convincing evidence, on the part of the media defendant. *New York Times v. Sullivan*, 376 U.S. 254 (1964).

The United States Court of Appeals for the District of Columbia Circuit has formulated a widely adopted three-part test for identifying a limited-purpose public figure. In *Clyburn v. News World Communications, Inc.*, 903 F.2d 29, 31 (D.C. Cir. 1990), the court stated that the finding required:

> (1) that there have been a public controversy; (2) that the plaintiff have played a sufficiently central role in the controversy; and (3) that the alleged defamatory statement have been germane to the plaintiffs participation in the controversy.

The classification of the plaintiff's status has profound implications for a trial because it determines who bears the burden of proof on various elements of a defamation action as well as the standard of proof applicable to the plaintiff. In *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1296 (D.C. Cir. 1980), *cert. denied,* 449 U.S. 898 (1980), the court also stated:

> A public controversy is not simply a matter of interest to the public, it must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way. The Supreme Court has made clear that private concerns or disagreements do not become public controversies.

Each requirement of the three-part test enunciated by the United States Court of Appeals for the District of Columbia Circuit was present in this case. As to the "public controversy" requirement, respondent's dispute with the Pennsylvania Auditor General and the Pennsylvania Department of Public Welfare over the use of public funds which was the subject of a press release and investigations by

the Pennsylvania Department of Public Welfare, the Pennsylvania Attorney General and the Philadelphia District Attorney was most certainly a "public" dispute and not a "private disagreement". The trial judge correctly ruled that the dispute was a public controversy. Further the recipients of Medical Assistance Program subsidies for dental services and the taxpayers of the state of Pennsylvania were affected in an "appreciable way" by the prevention of abuse and misuse in the payment of public funds. The Pennsylvania Auditor General had a statutory obligation to ensure that public funds were properly disbursed and that the Medical Assistance Program which respondent participated in was administered in a fiscally sound manner. Potential abuse or fraud in these programs was a legitimate matter of public concern.

The second requirement addresses whether the plaintiff played a sufficiently central role in the public controversy. In this case, the controversy was solely about

the respondent and his efforts to receive public funds for dental services that public officials alleged he had not performed. An anonymous tip to the state agency prompted several investigations into his activities and resulted in a widely distributed government issued press release on his actions. The public controversy here was not caused by the article, but rather respondent's conduct and the subsequent press release which put him at the center of the controversy. The trial court, while concluding that this was a public controversy, did not assess the impact of the press release in creating that public controversy. The Superior Court and the Supreme Court both failed to consider the press release as well.

The proper question is not whether the respondent volunteered for that publicity, but whether he engaged in conduct or activities out of which publicity could foreseeably arise. *Marcone v. Penthouse Int'l, Ltd.*, 754 F.2d 1072, 1083 (3d Cir.), *cert. denied*, 474 U.S. 864 (1985); *McDowell*

v. Paiewonsky, 769 F.2d 942 (3d Cir. 1985). Respondent, as a member of a state licensed profession, voluntarily participated in a government funded program for the provision of dental services to low income individuals. By so doing, he could reasonably foresee that his reimbursement practices would be a legitimate subject of governmental scrutiny. In that respect, respondent voluntarily injected himself into the events which were the subject of the petitioners' article. Petitioners are not contending that respondent's mere participation in a government subsidized program alone was sufficient to satisfy this requirement. But his participation in the program in conjunction with the investigations, the press release and respondent's initial denials are sufficient. Whether respondent intended to seek such status is of no consequence. As the court stated in *Marcone:*

> " ... if [plaintiffs] actions are sufficient to transform him into a limited public figure, it is of no moment that he did not desire such status. The purpose of the

> First Amendment would be frustrated if those persons and activities that most require public scrutiny would wrap themselves in a veil of secrecy and thus remain beyond the reach of public knowledge." 754 F.2d at 1086.

The third requirement, that the allegedly defamatory statements have been germane to the plaintiffs participation in the controversy, is clearly satisfied here because the article was limited exclusively to that controversy -- that is, public investigations of respondent's claims for payment of public funds for dental treatments.

The petitioners are mindful that this Court declined to find limited-purpose public figure status in *Hutchinson v. Proxmire*, 443 U.S. 111 (1979); *Wolston v. Reader's Digest Ass'n, Inc.*, 443 U.S. 157 (1979); and *Time, Inc. v. Firestone*, 424 U.S. 448 (1976). However, none of those cases had the same factual configuration as was present here. Further, none of those cases had to reach the element of the individual's participation or involvement because there was either no public controversy at all or the publicity giving rise

to the defamation action was the defendant's publication of a statement relating to the individual's essentially private actions. This Court in *Hutchinson* characterized the limited-purpose public figure defense in such instances as "bootstrapping."

The factual configuration in this case is distinguishable from these precedents. For example, in *Firestone* and *Hutchinson,* there was no preexisting public controversy before the allegedly defamatory statements were published. That is, the defendants' conduct created the publicity. In *Firestone,* the media defendants wrote about the plaintiff's divorce proceedings that alleged extramarital affairs by her; in *Hutchinson,* the defendant, a United States Senator, ridiculed the plaintiff's research efforts in a publicly disseminated mock prize called the "Golden Fleece Award." In *Wolston,* defendants published a book accusing the plaintiff of being a Soviet intelligence agent sixteen years after a grand jury probe of plaintiff's activities.

In summary, petitioners' contend that the respondent was a limited-purpose public figure for the following reasons:

(1) the controversy was "public" because of a press release issued by a public official on the use of public funds;

(2) the controversy was "public" because two public agencies had investigated respondent's activities (Department of Public Welfare and the Auditor General) and the matter was referred to two more public agencies (Attorney General and Philadelphia District Attorney) for criminal investigation;

(3) there was no "bootstrapping" in this case because the controversy preexisted the petitioners' article;

(4) the respondent, as a member of a licensed profession seeking the disbursement of public funds, voluntarily participated in the events which were the

subject of the article.

II. The Pennsylvania appellate courts did not undertake the thorough and independent review of the full trial court record that is required by the United States Constitution to ensure that First Amendment rights are adequately protected.

This Court has long held that the standard of appellate review is heightened in defamation cases involving media defendants reporting on matters of public concern. In such actions, appellate courts are required by the United States Constitution to undertake a thorough and independent review of the full trial court record to ensure that First Amendment rights are adequately protected and that the jury's verdict "does not constitute a forbidden intrusion on the field of free expression". *Bose Corp. v. Consumers Union of the United States, Inc.*, 466 U.S. 485 (1984) (quoting *New York Times v. Sullivan,* 376 U.S. at 295). This Court has held in several cases that where important constitutional rights are at stake,

such as defamation cases against media defendants reporting on matters of public controversy, a jury's findings and a trial judges' rulings are not sacrosanct and not entitled to any presumptive validity when being reviewed. In fact, such conclusions are to be given special scrutiny to prevent juries from giving short shrift to important First Amendment rights. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990); *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989); *Time, Inc. v. Pape*, 401 U.S. 279 (1971).

Independent review is necessary because of the possibility that juries may not give First Amendment rights the appropriate weight and value that such rights deserve under the Constitution. This principle is present in our laws "so that the perceived shortcomings of the trier of fact by way of bias or some other factor may be compensated for." *Bose*, 466 U.S. at 518. Furthermore, this Court has held that in the protection of First Amendment rights "the Court has been reluctant to give the trier of fact's conclusions

presumptive force and in so doing strip a federal appellate court of its primary function as an expositor of law." *Miller v. Fenton,* 474 U.S. 104, 114 (1985).

It is apparent from the Pennsylvania appellate court opinions that there was no such thorough and independent scrutiny of the trial record and the jury's verdict in this case. For example, the Pennsylvania Superior Court devoted less than one page of an eight page opinion to its "thorough and independent review" which consisted of a quotation to the *Bose* requirement and a perfunctory and conclusory statement that "...we, as an appellate court, have applied the constitutionally-mandated higher standard to the entire record...." (A-63). The Pennsylvania Supreme Court, in denying the discretionary review did so *per curiam* and did not issue an opinion, so that it is not possible to determine whether there was any review at all, much less a thorough and independent review as mandated by this Court.

III. The statements at issue were not actionable because they were not false or were constitutionally protected opinion and thus cannot, consistent with the First Amendment, be the basis for a jury verdict against a media defendant reporting on matters of public concern.

In Philadelphia Newspapers, Inc., v. Hepps, 475 U.S. 766 (1986), this Court held that where a newspaper publishes speech of public concern about a private figure, the private figure plaintiff cannot recover damages in a defamation action without also showing that the statements at issue were false. This Court previously held in *Gertz* that a private figure plaintiff in a defamation action cannot recover damages without showing that the media defendant was at fault--that is, negligence or actual malice--in publishing the statements at issue. *Id.*, at 347. A limited-purpose public figure must not only prove that the statements at issue were false, but also that they were published with actual malice. Respondent presented no evidence at trial of actual malice or even simple negligence, and his evidence on falsity consisted of testimony

presented no evidence at trial of actual malice or even simple negligence, and his evidence on falsity consisted of testimony that the respondent was never arrested or formally charged, by information or indictment, with a crime.

The statements at issue here were not actionable either because they were not false or because they were protected expressions of opinion. On the issue of falsity, the Supreme Court of Michigan, in *Rouch v. Enquirer & News of Battle Creek,* 440 Mich. 238, 487 N.W.2d 205 (1992), adopted a "material falsity" standard as the threshold consideration in a defamation case against a media defendant. The court concluded that if the statement at issue was not materially false, it need not consider whether it was negligently published. Were this Court to grant this petition and independently review the trial court record, it will be abundantly clear that the statements at issue in this case are not false.

Respondent argued that the headline of the article

which stated "West Philadelphia Dentist Charged With Fraud" was false and therefore actionable. Petitioners' contend that the headline is not false. It is clear from the context of the article that the newspaper was referring to the accusations of the Auditor General and not the formal criminal charging process. Based on the language of the press release, the reasonable inference drawn by the petitioners was that the Auditor General had in fact "charged" that the respondent had engaged in fraudulent conduct by submitting "19 false claims".

The term "fraud" or a variation of it appears throughout the press release. The purpose of the taxpayer information line established by the Auditor General was to encourage the public to report to the Auditor General suspected fraudulent misuse of public money. In fact, the Auditor General began it's investigation of respondent as a result of an anonymous call. Upon reviewing the press release and interviewing persons responsible for responding

to inquiries concerning the contents of the press release, petitioners drew the only reasonable conclusion possible and opined that the respondent had been charged with fraud by the Auditor General. The article did not state that respondent was charged with a crime. The respondents were not drawing a legal conclusion in the use of the word "charged" or in the use of the word "fraud".

The respondent also argued that the first sentence of the news article was false in stating that the respondent "faces criminal charges". That statement was in fact true because the respondent's case was referred to the office of the District Attorney of Philadelphia and the Attorney General of the Commonwealth of Pennsylvania, both of which have the authority under Pennsylvania law to conduct criminal investigations and prosecutions. The fact that respondent was never arrested and formally charge does not make the statement that he was "facing criminal charges" false. It is clear from the context of the article in its entirety that the

"unscrupulous" was based upon disclosed facts provided by reliable sources that were reported with specificity in the article. For instance, the characterization of appellee's conduct was based on interviews with the communications director of the Auditor General.

CONCLUSION

For the foregoing reasons, the petitioners respectfully request that this Honorable Court grant this petition for the writ of certiorari.

Respectfully submitted,

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Dated: July 12, 1996

Attorneys for the Philadelphia Tribune Company and Barbara Faggins

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APPENDIX

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IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

Glenn Arthur BROWN,	:	January Term, 1987
v.	:	
PHILADELPHIA TRIBUNE CO. and BARBARA FAGGINS	:	No. 1615

ORDER

And Now, this **7th** day of **October, 1993**, upon consideration of Plaintiff's Motion for a New Trial limited to the issue of punitive damages and Defendant's opposition thereto, it is hereby ORDERED and DECREED that Plaintiff's Motion is **DENIED**.

Additionally, upon consideration of Defendants' Motion for a Judgment Notwithstanding the Verdict or in the alternative a New Trial and Plaintiff's opposition thereto, it is hereby ORDERED and DECREED that Defendants' Motion for Judgment Notwithstanding the Verdict with

respect to the False Light Invasion of Privacy Count is **GRANTED** and **DENIED** with respect to the Libel Count.

BY THE COURT:

_____

Abraham J. Gafni, Judge

_____

Patrick W. Kittredge, Judge Pro Tem

Glenn Arthur BROWN,	:	Court of Common Pleas
	:	Philadelphia County
Plaintiff,	:	
	:	January Term, 1987
v.	:	
	:	
PHILADELPHIA TRIBUNE	:	
CO. and BARBARA	:	No. 1615
FAGGINS,	:	
	:	
Defendants.	:	

OPINION

Per Curiam:

Before the Court are three post-trial motions with respect to plaintiff's defamation and false light/invasion of privacy suit against defendants, the Philadelphia Tribune Company and Barbara Faggins.

The jury rendered a verdict in favor of plaintiff on both causes of action and awarded compensatory damages in the amount of $750,000. Both plaintiff and defendants filed post-trial motions that were argued August 17, 1992 before a panel en banc.

Plaintiff moved for a new trial limited to the issue of punitive damages contending that the trial judge erred by not submitting the issue to the jury.

Defendants filed two post-trial motions for relief. First, defendants moved for judgment notwithstanding the verdict by asserting eight grounds upon which such a motion would be proper. At the oral arguments, defendants limited the scope of the argument to one ground that plaintiff, under the circumstances, was a limited-purpose public figure and involved in a matter of legitimate public concern. Defendants contend that such a finding requires plaintiff to prove his case by clear and convincing evidence that defendants acted with malice. Accordingly, defendants assert that plaintiff failed to meet this burden and that their motion should be granted.

Defendants' second motion is in the alternative for a new trial. Defendants argued that the verdict on all counts and claims was against the weight of the evidence presented by plaintiff and that a new trial is warranted. Their motion

highlights four instances where they contend the jury's verdict was against the weight of the evidence. However, at oral arguments, defendants only argued that the weight of the evidence clearly favored a finding that plaintiff was a limited-purpose public figure and thereby required plaintiff to prove his case by clear and convincing evidence, which defendants claim plaintiff failed to do.

Factual Background

On January 24, 1986, the Philadelphia Tribune published an article written by Barbara Faggins entitled "West Philadelphia Dentist Charged with Fraud". Defendants contend that the article purported to report that Dr. Brown's medical assistance billing records were the current subject matter of an investigation by the Pennsylvania Auditor General. The source of the information for the article was a press release issued by the Auditor General's office regarding the doctor's alleged misuse of public funds. At trial, plaintiff

based its false light/invasion of privacy and defamation claims on specific language found in the article's title and the text of the article proclaiming that the doctor was "charged" with fraud and "facing criminal charges".

The issue of fault was fully litigated. Defendants' motions before the court claim that the jury's verdict in favor of plaintiff was against the weight of the evidence which tended to show that plaintiff was a limited-purpose public figure and thereby required him to prove malice (fault) by "clear and convincing" proof. Similarly, plaintiff argued in his motion for a new trial that he proved sufficient evidence of malice (fault) to support submitting the question of punitive damages to the jury.

Constitutional Standards

At common law, a defamatory statement was presumed to be false. The Supreme Court, however, has rejected this presumption in all cases in which plaintiff is

constitutionally required to prove some type of fault. Consequently, in such cases, a plaintiff must prove, as an additional element of the prima facie case, that a statement was false. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986). A plaintiff is constitutionally required to prove fault on the part of media defendants, in order to preserve the integrity of the First Amendment's guaranty of free speech. The degree of fault to be established by plaintiff depends on the type of plaintiff, i.e., whether he is a public official or public figure as compared with a private person plaintiff involved in a matter of legitimate public concern.

Defendants' motions can be decided by resolving whether the evidence supported a finding that plaintiff was a limited-purpose public figure. Such a finding would require plaintiff to prove actual malice by the defendant with clear and convincing proof. "Malice" as defined by the Supreme Court in New York Times v. Sullivan, 376 U.S. 254 (1964) required clear proof that either the defendant knew the

statement was false or recklessly disregarded whether the statement was true or false. Therefore, a limited-purpose public figure plaintiff must clearly show that the defendant knew or at least was subjectively aware that this statement was false.

Plaintiff's Motion for a New Trial
Limited to the Issue of Punitive Damages

Plaintiff's motion can be decided by a brief review of what the appropriate standard is for submitting a question of punitive damages to the jury in a defamation suit involving: (1) a private figure plaintiff; (2) a matter of legitimate public concern; and (3) a constitutionally protected media defendant. The Pennsylvania Supreme Court in Hepps v. Philadelphia Newspapers, Inc., 506 Pa. 304, 485 A.2d 374 (1984) rev'd on other grounds, 475 U.S. 767 (1986), affirmed the Superior Court of Pennsylvania's decision that a private figure plaintiff failed to present sufficient evidence of actual malice at trial to raise a jury issue concerning punitive

damages. Id. at 387. Pennsylvania appellate courts are in line with the Pennsylvania Supreme Court and the United states Supreme Court in reasoning that:

> [b]ecause punitive damages in defamation actions are in effect a punishment for speech, the formulation of the appropriate standard has been influenced by constitutional considerations. In Gertz v. Robert Welch, Inc., 418 U.S. 323, 349, 94 S.Ct. 2997, 3011, 41 L.Ed.2d 789 (1974), the United States Supreme Court held '[T]he states may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth'. This is, of course, the familiar "actual malice' formulation of the New York Times v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964).

Bargerstock v. WGCAC, 580 A.2d 361 (Pa. Super. 1990) (quoting Geyer v. Steinbronn, 506 A.2d 901, 913 (1986)). Pennsylvania Courts require "clear and convincing" evidence of actual malice on the part of the defendants before awarding punitive damages to a private person plaintiff in a defamation suit. Bargerstock, 580 A.2d at 366; citing Hepps,

485 A.2d 374.

Plaintiff cites Bargerstock for the appropriate standard for punitive damages. However, plaintiff fails to acknowledge this case as standing for the proposition that where "clear and convincing" evidence is lacking, a trial judge should withdraw the question from the jury's consideration. Bargerstock, 580 A.2d at 366. This is exactly the standard applied by the trial court here.

In Gertz, the Supreme Court announced the rule regarding the private-person plaintiff's ability to recover actual and punitive damages against media defendants. In Gertz, the Supreme Court addressed the issue of whether the Supreme Court's decision in New York Times v. Sullivan, 376 U.S. 254 (1964)[1] was applicable. Unlike New York

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[1]In New York Times v. Sullivan, the United States Supreme Court held that a public official may not recover for defamatory words relating to his official conduct in the absence of "clear and convincing" proof that the statement was made with malice.

Times v. Sullivan, the Supreme Court found a compelling counterforce to the public's interest in an uninhibited free press. This counterforce was the need to redress libelous statements made against private persons who have less access to media channels and who did not voluntarily place themselves in the public eye. Gertz, at 344-345. Consequently, the Supreme Court in Gertz adopted a less demanding standard than it did in New York Times v. Sullivan to enable a private figure plaintiff to recover actual damages against a media defendant. More importantly, the Gertz decision, consistent with the new York Times v. Sullivan decision, still required a private-person plaintiff to show actual malice in order to recover punitive damages. Gertz, at 348-350. In the defamation context, actual malice requires clear and convincing proof. Hepps, at 1562.

Based on our review of the arguments on both sides, relevant case law and the record as a whole, plaintiff's motion for a new trial is denied given plaintiff's failure to

meet its burden of proving a clear case of actual malice in order to recover punitive damages. Moreover, we find that to decide otherwise would be unfair to both parties involved and an abuse of our discretion. Accordingly, the jury's verdict is affirmed with respect to this issue.

Defendants' Motion for a Judgment Notwithstanding the Verdict or In The Alternative a New Trial

Defendants' motions can be resolved by examining the question of whether plaintiff was a limited purpose public figure plaintiff. This conclusion affects the outcome of defamation cases against media defendants since public figure and/or a public official are required to prove their case by clear and convincing evidence that the statement at issue was made with malice. The decision by the Supreme Court in New York Times v. Sullivan, supra, held that the public official may not recover for defamatory words relating to his official conduct in the absence of clear proof that the

statement was made with actual malice. This rule was later extended to cover litigation where a plaintiff is a "public figure". Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967). Defendants argue that plaintiff, although an unwilling limited-purpose public figure, was involved in a matter of legitimate public controversy pursuant to an investigation by a governmental agency. In this regard, Defendants argued that for the limited purpose of the investigation, plaintiff was a limited purpose public figure subject to public scrutiny.

The Supreme Court in Gertz v. Robert Welch, Inc., supra, delineated two categories of public figures. First, a plaintiff can qualify as an "all purpose public figure" where he has achieved such pervasive fame or notoriety that he becomes a public figure for all purposes. Second, a plaintiff can qualify as a limited purpose public figure where he voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for that limited range of issues. In Gertz, the Supreme Court

indicated that it might be possible for a person to become a public figure through no purposeful action of his own. However, the Supreme Court considered such occasions exceedingly rare. Accordingly, we do not agree with defendants' assertion that Mr. Brown fell into this second category.

It is unnecessary for a private person plaintiff to offer proof of actual malice. New York Times v. Sullivan, supra. In fact, as a private person plaintiff involved in a matter of public concern, one need only prove negligence on the part of defendants in publishing statements of a defamatory nature. Therefore, plaintiff did not have to prove defendants acted maliciously as defendants suggest.

With respect to plaintiff's claim alleging invasion of privacy/false light, however, the Supreme Court has concluded that where a matter of public interest is involved, a plaintiff must prove that the defendant published the report with knowledge of its falsity or in reckless disregard of the

truth (malice). Time, Inc. v. Hill, 385 U.S. 374, 387-88 (1967). Since plaintiff failed to offer sufficient proof of malice for the issue of punitive damages to go to the jury, it then follows that the jury's verdict in favor of plaintiff on his false light invasion of privacy count is improper. Therefore, judgment will be entered against plaintiff notwithstanding the verdict with respect to the false light count which required proof of actual malice and the judgment will be affirmed with respect to the libel count.

Conclusion

We find that there was sufficient evidence to support the jury's verdict that the newspaper article was defamatory. A reasonable person could infer from the language of the article that Dr. Brown was criminally charged with medicaid fraud. The newspaper had a legal obligation to exercise reasonable care and due diligence to ascertain the truth or falsity of the potentially defamatory statements before

publishing the article. Dr. Brown presented enough evidence to create a jury question as to whether the newspaper fulfilled this duty; therefore, the jury's verdict stands with respect to the libel count.

However, plaintiff did not prove, by clear and convincing evidence, actual malice on the part of the defendants in order to recover punitive damages and prevail on his false light/invasion of privacy count. Actual malice requires a finding of knowledge of the falsity of the statement or reckless disregard for the truth or falsity of the statement. Dr. Brown admits that he presented only "some" evidence of actual malice which he contends is sufficient to submit the question of punitive damages and false light to the jury. However, this proposition is contrary to the law that a plaintiff must present clear and convincing proof and absence thereof requires the trial judge to withdraw the question from the jury's determination.

Based upon the foregoing, defendants' motion for

judgment notwithstanding the verdict concerning false light invasion of privacy count is granted while the jury's verdict with respect to the libel count is affirmed. Finally, plaintiff's motion for a new trial concerning punitive damages is denied. An appropriate Order will be entered.

Abraham J. Gafni, Judge

Patrick W. Kittredge, Judge Pro Tem

Glenn Arthur BROWN,	:	Court of Common Pleas
	:	Philadelphia County
Plaintiff,	:	
	:	January Term, 1987
v.	:	
	:	
PHILADELPHIA TRIBUNE	:	
CO. and BARBARA	:	No. 1615
FAGGINS,	:	
	:	
Defendants.	:	

ORDER

And Now, this **11th** day of **Nov., 1994**, upon further consideration of Defendants' Motion for a Judgment Notwithstanding the Verdict or In The Alternative a New Trial with respect to plaintiff's libel count and plaintiff's opposition thereto, it is hereby ORDERED and DECREED that Defendants' Motion is **DENIED**.

Therefore, the Judgment entered in favor of plaintiff, Glenn Arthur Brown, D.M.D., and against defendants, Philadelphia Tribune Company and Barbara Faggins, in the amount of Seven Hundred and Fifty Thousand Dollars

($750,000.00) on October 1993 is affirmed.

BY THE COURT:

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Albert W. Sheppard, Judge

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Patrick W. Kittredge, Judge Pro Tem

Glenn Arthur BROWN,	:	Court of Common Pleas
	:	Philadelphia County
Plaintiff,	:	
	:	January Term, 1987
v.	:	
	:	
PHILADELPHIA TRIBUNE CO. and BARBARA FAGGINS,	:	No. 1615
Defendants.	:	

OPINION

Plaintiff Dr. Glenn Arthur Brown ("Dr. Brown") instituted this libel and invasion of privacy suit seeking damages from defendants Philadelphia Tribune Company and Barbara Faggins ("defendants") for the publication of an article on January 24, 1986 in the Philadelphia Tribune, following a press release by the Pennsylvania Auditor General, that contained the following three statements:

> "West Philadelphia Dentist Charged With Fraud"
>
> "Dr. Brown . . . faces criminal charges of welfare fraud"
>
> Dr. Brown "engaged in unscrupulous conduct at best"

A jury trial resulted in a verdict in favor of Dr. Brown and against defendants on both causes of action and Dr. Brown was awarded compensatory damages in the amount of $750,000.00. Both Dr. Brown and defendants filed post-trial motions that were argued before the Court en banc. Argument was limited to two issues an-d resulted in an Order denying Dr. Brown's motion for a new trial limited to the issue of punitive damages, granting defendants' motion for judgment notwithstanding the verdict with respect to only Dr. Brown's false light/invasion of privacy cause of action and denying defendants' Motion with respect to Dr. Brown's libel cause of action.

Defendants filed a timely appeal to the Superior Court of Pennsylvania claiming it was error, among other things, for the trial court not to consider all of the issues presented in their post-trial motions. The Superior Court agreed and remanded the case directing this Court to address issues raised in defendants' post-trial motions that were not

addressed in this Court's October 7, 1993 opinion. Pursuant to the Superior Court's July 20, 1994 Memorandum and Order, these issues will be addressed below. The grounds defendants assert for post-trial relief overlap and where possible, this court will dispose of both motions.

Defendants contend they are entitled to judgment notwithstanding the verdict because: (1) the statements at issue are opinions based on disclosed facts which would preclude a finding of falsity; (2) the statements at issue are not capable of defamatory meaning; (3) the article was within the "Fair Report" privilege; (4) damages may not be presumed in a private figure plaintiff's[1] defamation action against a media defendant; (5) there was no showing of actual damages to justify an award of compensatory damages; and (6) defendants were entitled to a non-suit at the end of Dr.

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[1]In our October 7, 1994 opinion, we found Dr. Brown to qualify as a private-figure plaintiff and therefore will not revisit defendants' arguments concerning Dr. Brown's alleged status as a "limited purpose public figure".

Brown's case since he failed to prove each element of his claims.[2]

Alternatively, defendants contend that they are entitled to a new trial because the jury's verdict was against the weight of the evidence concerning whether: (1) Dr. Brown proved that the statements at issue were false; (2) the statements at issue were capable of defamatory meaning and a "fair and substantially accurate summary of the contents of the press release were against the weight of the evidence"; (3) defendants abused the privilege of fair report; (4) defendants' publication was the legal or proximate cause of harm to Dr. Brown; and (5) Dr. Brown sustained sufficient

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[2]Defendants claim that a compulsory nonsuit must be entered because Dr. Brown failed to meet his burden of proof in a defamation case. In this regard, defendants simply repeat each argument raised in support of their motion for JNOV and claim that a compulsory nonsuit should have been entered. As will be discussed at length, we find each of defendants' grounds insufficient to justify entry of a JNOV. It follows that defendants' compulsory nonsuit ground must also fail.

harm to justify an award of compensatory damages.

Judgment notwithstanding the verdict ("JNOV") may be entered only where no two reasonable persons could disagree that the verdict was improper. Erkens v. Tredennick, 353 Pa. Super. 236, 509 A.2d 424 (1986). In other words, a motion for JNOV should be denied absent a clear case. Greyer v. Steinbronn, 351 Pa. Super. 536, 506 A.2d 901 (1986). A clear case can be found only after the facts are considered in the light most favorable to the party against whom the motion is made. Henze v. Texaco, Inc., 352 Pa. Super. 538, 508 A.2d 1200 (1986). However, where the law permits no recovery on the facts which have been alleged and which the jury may justifiably have found a judgment notwithstanding the verdict is properly granted. Id.

Ordinarily, a new trial will be granted due to the impropriety of the verdict, only if the verdict shocks the conscience of the court. Wilbert v. Pittsburgh Consol. Coal Co., 385 Pa. 149, 122 A.2d 406 (1956). However, if

reasonable persons might find the verdict which was found, it should not be disturbed. Defendants describe five instances where they believe that the verdict was against the weight of the evidence. A new trial will be granted where the verdict is against the weight of the evidence only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. Kopeika v. Medical Assoc., 347 Pa. Super. 500, 500 A.2d 1168 (1985). With these deferential principles in mind, this Court finds no basis upon which to grant defendants' post-trial motions.

Opinion Defense\Falsity

While expressions of opinion may be privileged, "there is no constitutional value in false statements of fact." Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (1974). Moreover, in 1990, the Supreme Court of the United States rejected similar arguments, concluding that the First

Amendment does not require a separate "opinion" privilege limiting the application of state defamation laws. Milkovich v. Lorain Journal Co., 110 S.Ct. 2695 (1990). Defendants claim that the statements at issue constitute opinions thereby precluding a finding of falsity. This Court disagrees with this contention on two grounds.

In ordinary usage an "opinion" is defined as "a view, judgment, or appraisal formed in the mind about a particular matter" or as a "belief stronger than an impression and less strong than positive knowledge". (Webster's Ninth New Collegiate Dictionary 1989). Citing the Superior Court's decision in Dougherty v. The Bovertown Times, 547 A.2d 778 (Pa. Super. 1988), defendants claim that the statements at issue are opinions and therefore not actionable. See Defendants' Memorandum of Law In Support of Motion For Post Trial Relief ("Defendants' Brief") at pp. 6-10. Defendants also contend in support of their motion for a new trial that Dr.

Brown failed to establish that the statements at issue are false.

With respect to the headline and the first paragraph, we disagree that these statements constitute expressions of opinion. Opinions usually consist of comments as to the one's conduct, qualifications or character. Neither of these statements possess these ordinary trappings of an expression of an opinion.

Defendants argue that the headline "West Philadelphia Dentist Charged With Fraud" represents an "obvious conclusion" drawn from their review of the Auditor General's press release. Defendants make a similar argument in connection with the statement in the first paragraph. Defendants contend that it was reasonable to conclude that "Dr. Brown . . . face[d] criminal charges of welfare fraud" when matters are under investigation by the District Attorney or Attorney General.

We disagree and find that these statements are more

easily understood as statements of fact. A plain reading of both the headline and the first paragraph leads the reader to believe that the author is expressing some positive knowledge concerning charges against Dr. Brown and not merely an opinion.

While the statement Dr. Brown "engaged in unscrupulous conduct at best" appears to be an opinion in form, the article attributes the statement to David Kirkpatrick, then spokesperson for the Auditor General's office. It is not surprising that defendants ignore this fact in order to take advantage of the opinion defense. Nonetheless, we agree with Dr. Brown that "a statement cannot be the protected opinion of the reporter when it is attributed as a direct quote to someone else". Plaintiff's Brief at p. 24 n. 15.

Even assuming that the headline and the first paragraph are opinions, in order for defendants to prevail, these opinions cannot imply the existence of - undisclosed

defamatory facts. In Dougherty, the Superior Court relied upon its earlier adoption of Section 566 of the Restatement (Second) of Torts in Braig v. Field Communications, 456 A.2d 1366 (1983), cert. denied 466 U.S. 970 (1984) to find certain alleged defamatory statements published by a newspaper actionable opinions. Section 566 provides that:

> A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion.

Comment B to Section 566 explains that there are two varieties of opinions, "pure" and "mixed".

> The simple expression of opinion, or the pure type, occurs when the maker of the comment states the facts on which he bases his opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct qualifications or character. . . . The second kind of expression of opinion, or the mixed type, is one which, while an opinion in form or context, [it] is apparently based on facts regarding the plaintiff or his conduct that have not been stated by the defendant or assumed to exist by the parties to the communication. Here the expression of opinion give rise to the inference that there are undisclosed facts that justify the forming of the opinion

expressed by the defendant. . . .

The Restatement recognizes that an expression of a defamatory opinion about a plaintiff based upon disclosed nondefamatory facts are "pure" opinions and not actionable. Where an opinion appears in the form of a factual assertion, like here, it is protected only if "it is clear from the context that the maker is not intending to assert another objective fact, but only his personal comment on the facts which he has stated." Restatement (Second) of Torts, § 566, Comment b, p. 171. In reviewing the statements at issue, this court is convinced that they do not constitute "purell expressions of opinion, which would be absolutely privileged.

The question becomes whether these statements are a mixed type of opinion. The publication of a mixed-typed of opinion is actionable if the comment is reasonably understood as implying the assertion of the existence of undisclosed facts about the plaintiff that must be

defamatory in character in order to justify the opinion. Restatement (Second) of Torts, § 566, Comment C, p. 173. While the press release discussed the investigation of alleged fraudulent billing practices, there is no mention of criminal charges.

Defendants contend that the words "charged" and "fraud" were used in a non-legal sense.[3] This is not a surprising argument, since the testimony at trial revealed that Dr. Brown was never indicted, formally charged or found guilty of committing any crime. N.T. 3/11/92 at p. 138. Nonetheless, defendants contend that these statements are protected opinions and Dr. Brown has failed to establish their falsity.[4] We disagree and find that the jury

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[3]This argument directly contradicts defendants' opening argument that the statements "charged with fraud" and "faces criminal charges" are obvious conclusions when matters are under investigation by the District Attorney or Attorney General.

[4]Defendants also contend in support of their motion for a new trial, that Dr. Brown failed to offer sufficient proof

could have reasonably concluded that these statements were understood and indeed-implied that criminal charges had been brought against Dr. Brown as a result of a criminal investigation.

The statements "Charged with fraud" and "faces criminal charges of welfare fraud" are justifiable if and only if it is assumed that Dr. Brown did in fact engage in fraudulent billing practices and other criminal activity. The statement "unscrupulous at best" is not necessarily true or false but attributed to an individual who denied making the statement. The record revealed that no such charges were filed. Both Dr. Brown and defendants testified at trial that Dr. Brown was never criminally charged. In fact, the reporter admitted to knowing that no charges were pending against Dr. Brown at the time the article was published.

Since the record is undisputed that Dr. Brown was

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that these statements were false. Defendants' Brief at p. 31.

never arrested, indicted, or criminally charged, the jury's finding of falsity was supported by the weight of the evidence. This evidence was more than sufficient to sustain the jury's conclusion that the statements at issue were false. Therefore, defendants are not entitled to either a new trial concerning the issue of falsity or *JNOV*.

Defamatory Meaning

Next, defendants contend that the trial court erred in finding that the statements at issue were capable of bearing a defamatory meaning and that Dr. Brown did not meet his subsequent burden of proving to the jury that the article was defamatory. Defendants' Brief at pp. 10, 33-34. These claims also lack merit. It is the province of the court to initially determine whether the challenged publication is capable of defamatory meaning. Corabi v. Curtis Publishing Co., 273 A.2d 899.(Pa. 1971); see also Kryeski v. Schott Glass Technolocfies, 626 A.2d 595 (Pa. Super. 1993); and Livingston v. Murray, 612 A.2d 443

(Pa. Super. 1992). The legal principles concerning a court's determination as to whether a publication is capable of defamatory meaning are well established:

> In order for a statement to be considered libelous or slanderous, the trial court must, in the first instance, make a determination as to whether the communication complained of can be construed to have the defamatory meaning ascribed to it by the complaining party. In reaching this conclusion, the court must view the statements in context, and determine whether the statement was maliciously written or published and tended to blacken a person's reputation or to expose him to public hatred, contempt, or ridicule, or to injure him in his business or profession.' The test to be applied in evaluating any statement is the "effect the article is fairly calculated to produce the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate.' A critical factor in determining whether a communication is capable of defamatory meaning then is the nature of the audience hearing the remarks.

Baker v. Lafayette College, 532 A.2d 399 (Pa. 1987) (citations omitted).

Applying these principles to the present case, it is

clear that the statements at issue and the publication as a whole are defamatory. In so concluding, this court finds that the publication is capable of conveying to the average reader imputations of involvement in or actual guilt of crimes involving welfare fraud on the part of Dr. Brown thereby tending to harm Dr. Brown's personal and professional reputation, lowering Dr. Brown in the estimation of the community, and deterring patients from dealing with him.

Apart from setting forth the legal principles related to the court's determination of whether a certain publication is capable of defamatory meaning, defendants offer no analysis in connection with their claim that the publication at issue is incapable of defamatory meaning. Rather, they simply argue that the publication is not capable of being construed to have the meaning Dr. Brown assigns to it; namely, that formal criminal charges were pending against Dr. Brown.

Defendants have argued on several occasions that the publication used the words "charge" and "fraud" in a non-legal sense. However, the appellate courts of Pennsylvania caution that "neither the mere susceptibility of an article to an interpretation which would render it innocuous nor the intention of the author conclusively defeats a right of action for libel". Argriss v. Roadway Exp., Inc. 483 A.2d 456 (Pa. Super. 1984)(citing Corabi v. Curtis Publishing Co. , 273 A.2d 809 (Pa. 1971).

We agree with Dr. Brown's interpretation of the publication by finding that it is capable of defamatory meaning. When read in context, the publication can be reasonably understood to impute to Dr. Brown at best, dishonest conduct and at worst the crime of welfare fraud. Either interpretation challenges Dr. Brown's fitness to conduct a dental practice which received public funds. Not to mention the fact that it is a well recognized proposition that describing someone as charged with a crime is

libelous. See, e.g., Corabi, supra. Therefore, under the legal principles applicable to defendants' motions, this court's determination that the statements at issue were capable of defamatory meaning was justifiable and the jury's determination that the statements were defamatory was supported by sufficient record evidence.

"Fair Report" Privilege

While Pennsylvania has neither codified the "fair report" privilege nor officially adopted the Restatement's version of the same, courts within this Commonwealth have applied the privilege set forth in Section 611 of both the original and current version of Restatement.[5] The

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[5]Decisions applying the original Restatement's version of Section 611 include: Binder v. Triangle Publications, Inc., 442 Pa. 319, 324, 275 A.2d 53, 56 (1971); Purcell v. Westinghouse Broadcasting Co., 411 Pa. 167, 177, 191 A.2d 662, 667 (1963); and Schiandra v. Lynett, 409 Pa. 595, 600, 187 A.2d 586, 589 (Pa. 1963). Decisions applying the current Restatement version of Section 611 include: Oweida v. Tribune-Review Pub. Co., 599 A.2d 230 (Pa. Super. 1991); Medico v. Time, Inc., 643 F.2d 134 (3d Cir. 1981); and Williams v. WCAU-TV, 555 F. Supp. 198 (E.D.Pa.

parties' respective burdens have been described as follows:

> The burden is upon the defendant in the first instance to establish the existence of the privileged occasion.[] It is then a matter for the trial court to determine whether 'the occasion upon which defendant published the defamatory matter gives rise to a privilege.'[] 'Whether a communication is conditionally privileged is a question for the court and whether that privilege is abused is a question for the jury.'[] Once the existence of the privilege is established, the burden then shifts to the plaintiff to establish an abuse of that privilege . . . .

Oweida v. Tribune-Review Pub. Co., 599 A.2d 230 (Pa. Super. 1991)(citations omitted).

Upon review of the parties' submissions, there appears to be no dispute among the parties that the "fair report" privilege extends to published accounts of official proceedings where the account is "fair and substantially accurate". See Defendants' Brief at pp. 11-13; see also Plaintiff's Brief at pp.8-9. While it is the province of the Court to determine whether the occasion upon which the

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1983).

defendant published the defamatory matter gives rise to a privilege, there appears to be no dispute among the parties that the defendants' reporting of the information contained in the Press Release falls within the fair report privilege. This Court does not differ in its opinion of the article since the press release was generated by a public official that informed its reader of the circumstances behind an official investigation of Dr. Brown's billing practices and the results.

The question becomes whether Dr. Brown has established that defendants abused the privilege of fair report. While the Supreme Court of Pennsylvania recognized that it is not essential that an "official report be set forth verbatim" by a newspaper, the account must be substantially accurate. Schiandra v. Lynett, 137 A.2d 586, 589 (Pa. 1963). Comment (a) to the Restatement explains that:

> Not only must the report be accurate, but it must be fair. Even a report that is accurate

> so far as it goes may be so edited and deleted as to misrepresent the proceeding and thus be misleading. Thus, although it is unnecessary that the report be exhaustive and complete, it is necessary that nothing be omitted or misplaced in such a manner as to convey an erroneous impression to those who hear or read it. . . . The reporter is not privileged under this Section to make additions of his own that would convey a defamatory impression nor to impute corrupt motives to any one, nor to indict expressly or by innuendo the veracity or integrity of any of the parties.

Indeed, a statement is substantially accurate if its "gist" or "sting" is true; that is, if it produces the same effect on the mind of the recipient which the precise truth would have produced. Oweida v. Tribune Review Pub. Co., 599 A.2d at 239. In this regard, Pennsylvania courts have held that the "qualified immunity is forfeited if the publisher steps out of the scope of the privilege or abuses the occasion ... by exaggerated additions or embellishments to the account". Schiandra, 137 A.2d at 589. Whether the privileged has been forfeited is a question for the jury.

Oweida v. Tribune Review Pub. Co., 599 A.2d at 235. The jury's task has been characterized as determining whether the privilege has been forfeited as a result of defamatory embellishments. Id. at 239.

Defendants contend that they are entitled to judgment notwithstanding the verdict or in the alternative a new trial on the grounds that the article was within the fair report privilege. As demonstrated above, in order to prevail on their motions, the jury cannot have found that defendants abused the privilege. We disagree with defendants' position by finding that the jury could reasonably conclude that defendants forfeited the privilege by virtue of their adding exaggerated and defamatory embellishments sharpening the "sting" of the information contained in the press release.

Defendants argue that the article was based "primarily on the contents of a press release issued by the Pennsylvania Auditor General". Defendants' Brief at p.

14. Defendants further contend that each of the statements at issue were either "taken verbatim from the press release or reasonably inferred from the press release or the interviews conducted by the defendant". Id.

The jury reviewed copies of both the article and the press release for purposes of comparison. Indeed, defendants admitted that the press release contained no suggestion that criminal charges had been filed or were about to be filed. N.T., 3/11 at p. 114. Further, both defense witnesses who testified at trial admitted that the article could be fairly construed as stating that there was then pending a formal criminal prosecution against Dr. Brown. N.T., 3/11, at pp. 111, 189. In light of defendants' own testimony, this Court rejects defendants' assertion that any of the statements at issue could have been taken from the article "verbatim" or even reasonably inferred from the press release or interviews. The fair report privilege was not intended to protect situations like

the present case. Therefore, defendants' motion for JNOV or a new trial must be denied.

Presumed Damages

The Supreme Court of the United States explained its earlier decision in Gertz v. Robert Welch, Inc., 418 U.S. 323 (1986), as holding:

> although a showing of simple fault sufficed to allow recovery for actual damages, even a private-figure plaintiff was required to show actual malice in order to recover presumed or punitive damages.

Philadelphia Newspapers, Inc. v. Hepps, 475 U.S.767, 774 (1986). Pennsylvania courts are in line with the Supreme Court of the United States' reasoning. See Bargerstock v. WGAC, 580 A.2d 361 (Pa. Super. 1990). In our October 7, 1993 opinion, we denied Dr. Brown's motion for a new trial limited to the issue of punitive damages because of Dr. Brown's failure to meet his burden of proving a clear case of actual malice in order to recover punitive damages.

As an additional ground for entering judgment

notwithstanding the verdict, defendants contend that damages cannot be presumed in defamation actions where a media defendant asserts the fair report privilege. See Defendants' Brief at pp. 18-21. While defendants are correct in their assertion that damages cannot be presumed in this case, it is not due to defendants' assertion of the fair report privilege as a defense but rather due to Dr. Brown's failure to prove his case of actual malice.

Defendants' argument is based upon the premise that."abuse of privilege is demonstrated by showing that the defamatory communication was published 'solely to cause harm". This statement is incorrect at best. Rather,

> Pennsylvania" courts recognize two forms of "abuse": the account of an official report may fail to be fair and accurate, as when the publisher overly embellishes the account, Binder v. Triangle Publications, Inc., 442 Pa. 595, 601, 187 A.2d 53, 56 (1971); Schiandra v. Lynett, 409 Pa. at 600, 187 A.2d at 589; or the defamatory material may be published for the sole purpose of causing harm to the person defamed, Id.

Medico v. Time Inc., 643 F.2d 134, 146 (3d Cir. 1981)

(emphasis added). Therefore, defendants' argument for requiring Dr. Brown to prove actual malice in order to defeat defendants' assertion of the fair report privilege is logically unpersuasive and legally insupportable.

Actual Damages

Defendants next argue that Dr. Brown failed to offer any competent evidence of actual damage proximately caused by the publication. This argument must be considered in light of the following passage from Gertz, supra.:

> It is necessary to restrict defamation plaintiffs who do not prove knowledge of falsity or reckless disregard for the truth to compensation for actual injury. We need not define "actual injury," as trial courts have wide experience in framing appropriate jury instructions in tort actions. Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards

> must be supported by competent evidence concerning the injury although there need be no evidence which assigns an actual dollar value to the injury.

Gertz, 418 U.S. at 349-50; see also Argriss v. Roadway Exp. Inc., 334 Pa. Super. 295, 328, 483 A. 2d 456 (1984) (A plaintiff in a libel case need not prove special damages or harm and may recover for any injury done to his reputation or for any other injury for which a libel is the legal cause.)

The evidence at trial revealed that prior to the article, Dr. Brown's integrity, intelligence and competence was well regarded by his patients and coworkers. N.T., 3/11 at p. 5. The evidence established that following the article's publication, patients lost trust in Dr. Brown and even inquired about his ability to treat medical assistance patients. N.T., 3/11 at pp. 8-12. Dr. Brown was criticized by his peers and generally believed by acquaintances, peers and patients alike to have committed a crime. N.T., 3/11

at pp. 8, 56-57. There was testimony from acquaintances of Dr. Brown that Dr. Brown suffered public embarrassment and humiliation not to mention the fact that he gave up his goal of opening a chain of low-cost, high quality dental centers for under-served segments of the Philadelphia community. N.T., 3/11 at 55-56, 61-67. Finally, Dr. Brown described in detail how the article negatively impacted upon both his professional and personal goals. N.T., 3/10 at 105-127.

In light of the evidence described above, we disagree with defendants' contention that Dr. Brown failed to offer competent evidence of actual damage to justify the jury's award. To the contrary, this evidence is more than competent to support an award for injury done to Dr. Brown's reputation. In addition, there is sufficient competent evidence in the record from which the jury could have compensated Dr. Brown for the mental anguish and emotional pain and suffering he has been caused to

endure as a direct result of the article's publication.

In this regard, we can also reject defendants' final contention for granting a new trial. Defendants suggest that Dr. Brown's harm was caused by the Auditor General's press release and not the article. Defendants contend that they are entitled to a new trial as the jury's verdict was against the weight of the evidence as there was insufficient evidence to support the jury's finding that the article injured Dr. Brown's reputation. We disagree and find that the record clearly supports the jury finding that Dr. Brown was harmed by the defendants' defamatory embellishments to the information contained in the press release.

Based upon the foregoing, defendants' motion for judgment notwithstanding the verdict or in the alternative a new trial on the libel count is denied and the jury's verdict with respect to this count is affirmed.

BY THE COURT:

Albert W. Sheppard, Judge

Patrick W. Kittredge, Judge Pro Tem

November 11, 1994

GLENN A. BROWN,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
PHILADELPHIA TRIBUNE CO. and BARBARA FAGGINS,	:	
Appellants.	:	No. 00873 PHL 95

Appeal from the Order dated February 1, 1995,
Docketed February 7, 1995 in the
Court of Common Pleas of Philadelphia County, Civil Division,
at No. 8701-1615.

BEFORE: CIRILLO, TAMILIA, AND HOFFMAN, JJ.

JUDGMENT

ON CONSIDERATION WHEREOF, *it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* PHILADELPHIA *County be, and the same is hereby* AFFIRMED.

BY THE COURT:

Dated: NOVEMBER 20, 1995

GLENN A. BROWN,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
PHILADELPHIA TRIBUNE CO. and BARBARA FAGGINS,	:	
Appellants.	:	No. 00873 PHL 95

Appeal from the Order dated February 1, 1995, Docketed February 7, 1995 in the Court of Common Pleas of Philadelphia County, Civil Division, at No. 8701-1615.

BEFORE: CIRILLO, TAMILIA, AND HOFFMAN, JJ.

OPINION BY HOFFMAN, J.: FILED Nov. 20, 1995

This is an appeal from an order dated February 1, 1995 redocketing an order and opinion of November 11, 1994, which denied appellants' post-trial motion and entered judgment in favor of appellee, Glenn Arthur Brown, D.D.S. Appellants, the Philadelphia Tribune and Barbara Faggins, raise the following eight issues for review:

1. DID THE TRIAL JUDGE GIVE PROPER INSTRUCTIONS TO THE JURY ON THE APPELLANTS' FAIR REPORT PRIVILEGE AND ITS APPLICATION TO THE FACTS OF THIS CASE?

2. DID THE TRIAL JUDGE GIVE PROPER DIRECTIONS AND INSTRUCTIONS TO THE JURY AS TO THE APPELLEE'S BURDEN OF PROOF AS TO EACH STATEMENT IN THE ARTICLE ALLEGED TO BE DEFAMATION?

3. DID THE TRIAL JUDGE GIVE PROPER INSTRUCTIONS TO THE JURY ON THE STANDARD OF FAULT WHEN A LIBEL ACTION INVOLVES A MEDIA DEFENDANT REPORTING ON A MATTER OF PUBLIC CONCERN?

4. DID THE TRIAL JUDGE GIVE PROPER INSTRUCTIONS TO THE JURY ON THE ISSUE OF COMPENSATORY DAMAGES?

5. DID THE TRIAL JUDGE ERR IN PERMITTING AN EXPERT WITNESS TO TESTIFY ON THE ULTIMATE ISSUE OF FACT?

6. DID THE TRIAL JUDGE ERR IN ITS LEGAL CONCLUSION THAT APPELLEE WAS NOT A LIMITED PURPOSE PUBLIC FIGURE?

7. DID THE TRIAL JUDGE ERR IN PERMITTING THE JURY TO DECIDE THE LEGAL QUESTION OF WHETHER THE ALLEGEDLY DEFAMATORY STATEMENTS WERE EXPRESSIONS OF OPINION AND THEREFORE SUBJECT TO A FINDING OF FALSITY?

8. DID THE LOWER COURT USE THE PROPER STANDARD OF REVIEW IN CONSIDERING APPELLANTS' POST-TRIAL MOTIONS?

See Appellants' Brief at ix.[1] For the following reasons, we affirm.

On January 24, 1986, Barbara Faggins wrote an article entitled "West Philadelphia dentist charged with fraud" which was published in the Philadelphia Tribune. Thereafter, appellee, who was the subject of the article, sued the

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[1] Although appellants' brief technically violated Rule 2116(a) (one -page limit on statement of questions involved) and Rule 2135 (50-page length of briefs, including all pages except for table of contents) of the Pennsylvania Rules of Appellate Procedure, we will review appellants' claims in the interest of justice. See Pa. R. Civ. P. 126 (court may disregard any procedural defect which does not affect the substantial rights of the parties).

Philadelphia Tribune Company and its reporter Faggins, alleging that three separate statements in the article were defamatory.[2]

Following a trial in March 1992, a jury rendered a verdict in favor of appellee and assessed damages in the amount of $750,000. Thereafter, appellants filed a post-trial motion seeking a judgment notwithstanding the verdict (JNOV) or, alternatively, a new trial, which was denied on October 7, 1993. After judgment was entered on October 25, 1993, appellants filed a timely appeal to this Court. However, since the trial court failed to address all of the post-trial issues in its first opinion, we remanded this matter

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[2] The three statements at issue were (1) the headline "West Phila. dentist charged with fraud," when in fact he was never charged; (2) the lead sentence "[appellee] faces criminal charges of welfare fraud," when in fact appellee was merely investigated and never charged; and (3) a quotation attributed to the Auditor General's Communication Director calling appellee's conduct "unscrupulous at best," which at trial the Communication Director denied ever stating to the reporter.

to the trial court. On remand, the trial court issued a November 11, 1994 order and lengthy opinion denying all of appellants' contentions raised in their post-trial motion and entering judgment for appellant. Because notice of the November 11, 1994 order was not mailed to all counsel of record, the matter was redocketed by an order of February 1, 1995. This timely appeal followed.

The first four of appellants' arguments center around the trial court's failure to properly instruct the jury in its jury charge.

It is clear under Pennsylvania law that issues not raised below are waived on appeal. Pa. R.A.P. 302(a). This is true even if the issues raised on appeal are of constitutional dimension. Commonwealth v. Hawkins, 295 Pa. Super. 429, 439 n.6, 441 A.2d 1308, 1312 n.6 (1982). Moreover, if a party seeks to object to a jury charge, "specific exception shall be taken to the language or omission complained of." Pa. R.A.P. 302(b).

In the instant case, appellants failed to take exception to the jury instructions both at trial and in the post-trial motions. In fact, at trial, when expressly asked whether appellants had any objections to the content of the jury charge, appellants' counsel affirmatively stated that appellants were "satisfied." N.T., March 12, 1992, at 542b. Moreover, no exceptions to any specific jury instruction were taken in appellants' post-trial motions. Thus, we are precluded from considering the merits of these issues on appeal. Pa. R.A.P. 302(a), 302(b). See Pa. R. Civ. P. 227(b) ("[A]ll exceptions to the charge of the jury shall be taken before the jury retires."); Larch v. Haverford State Hosp., 152 Pa. Cmwlth. 459, 620 A.2d 37 (1993) (failure of trial counsel to specifically object to jury instruction waived issue on review); Shaffer v. Pullman Trailmobile, 368 Pa. Super. 199, 203, 533 A.2d 1023, 1025 (1987) (appellant counsel's failure to take specific exception to jury charge while stating "Judge, I don't have objection..." waived issue for review).

Appellants next argue that the trial court erred in allowing appellee's expert witness, a Bucks County District Attorney, to testify about an ultimate issue of fact before the jury.

We have stated that an appellant must (1) "make a timely, specific objection at trial," and (2) "raise the issue on post-trial motion" in order to properly preserve an issue for appeal. Commonwealth v. Keysock, 236 Pa. Super. 474, 478-79, 345 A.2d 767, 769 (1975) . See also Nobel v. West Penn Power Co., 36 Pa. Cmwlth. 577, 388 A.2d 781 (1976). In the instant case, although appellants objected to the substance of the expert's proposed testimony at trial, appellants did not preserve a challenge to this testimony in their post-trial motions. Thus, we will not review the merits of this issue either. Keysock, supra; Nobel, supra.

Having disposed of the issues that were not properly raised below, we now turn to appellants' properly preserved contentions.

First, appellants contend that the trial judge erred in its legal conclusion that appellee was a private figure and not a limited purpose public figure. Essentially, appellants argue that appellee should have been required to prove appellants', "actual malice" rather than simple negligence in publishing the article because appellee was a limited purpose public figure rather than a private figure.

We initially note that our review of this issue is plenary, as it involves a question of law. Meeting House Lane, Ltd. v. Melso, 427 Pa. Super. 118, 125, 628 A.2d 854, 857 (1993), appeal denied, 537 Pa. 633, 642 A.2d 486 (1994).

In Gertz v. Robert Welch, Inc., the United States Supreme Court stated:

> [T]hose who attain th[e] status of [public figure] have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly those classed as public figures have thrust

> themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and public comment.

418 U.S. 323, 345, 94 S. Ct. 2997, 3009, 41 L. Ed. 2d 789, __ (1974). However, "those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure." Hutchinson v. Proxmire, 443 U.S. 111, 135, 99 S. Ct. 2675, 2688, 61 L. Ed. 2d 411,___ (1979).

In the instant case, appellee merely received state reimbursement for dental work performed on lower-income patients. See Hutchinson, supra (finding a behavioral scientist who received federal monies and who was thrust into a public controversy over expenditure of public funds was not a public figure). Moreover, the evidence at trial indicated that appellee's name was not one which invited attention or public comment prior to appellants' newspaper account. See Wolston v. Readers' Digest Ass'n, Inc., 443 U.S. 157, 99 S.

Ct. 2701, 61 L. Ed. 2d 450 (1979) (plaintiff who engaged in criminal conduct found not to be a limited purpose public figure when "dragged unwillingly" into public controversy). Thus, we agree with the trial court that appellants' article caused appellee to be "thrust unwillingly" into a public controversy and that appellee does not qualify as a limited purpose public figure. Hutchinson, supra; Wolston, supra; See Gertz, supra (attorney who had published books and articles on legal issues was not a public figure); cf. Rutt v. Bethelems' Globe Pub. Co., 335 Pa. Super. 163, 484 A.2d 72 (1984) (police officer who was father of individual who committed suicide was not a limited purpose public figure).

Appellants also contend that the trial judge erred in permitting the jury to decide the legal question of whether the allegedly defamatory statements were expressions of opinion, which cannot be subject to a finding of falsity. We disagree.

In Rutt, supra, we stated:

It is the function of the trial court to

> determine, in the first instance, whether the communication is capable of defamatory meaning. If the court determines that the communication is capable of a defamatory meaning, it then becomes the jury's function to decide whether it was so understood by those who read it.

Id. at 172, 484 A.2d at 76 (citations omitted). See Dougherty v. Boyertown Times, 377 Pa. Super. 462, 472, 547 A.2d 778, 783 (1988) ("'If there is an alternative defamatory interpretation [to a statement], the issue must proceed to the jury.").

In its November 1994 opinion, the trial court extensively explained why it found the statements capable of defamatory meaning. Tr. Court Op., November 13, 1994, at 9-11. Upon our review of the statements at issue, we agree with the trial court that the statements were, in fact, capable of defamatory meaning. Rutt, supra. Moreover, our review of the jury charge demonstrates that the defamation issues were properly submitted to the jury. Consequently, we find

no merit in appellants' claim.

Finally, appellants contend that the trial court applied an improper standard of review in considering their post-trial motions. Specifically, appellants argue that the trial court was required to apply an higher "independent and thorough" review standard and not simply defer to the findings of the jury.

In Bose v. Supply Company of the United States, Inc., 466 U.S. 485, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984), the United States Supreme Court wrote:

> In cases raising First Amendment issues ... an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free speech.'

Id. at 499, 104 S. Ct. at 1958, 80 L. Ed. 2d at ___ (citations omitted), cited in Milkovich v. Lorain Journal Co., 497 U.S. 1, 17, 110 S. Ct. 2695, 2705, 111 L. Ed. 2d 1, __ (1990).

Regardless of what standard the trial court applied in

reviewing appellants' post-trial motions, we, as appellate court, have applied the constitutionally-mandated higher standard to the entire record and are confident that this verdict is not an unwarranted intrusion on the field of free speech. Bose, supra; Milkovich, supra. Consequently, we also dismiss this final claim.

Accordingly, for the above reasons, we affirm the orders of the trial court below.

Order affirmed.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Glenn Arthur BROWN,	:	No. 1000 E.D. Allocatur
	:	Docket 1995.
Respondent,	:	
	:	
v.	:	
	:	
PHILADELPHIA TRIBUNE	:	Petition for Allowance
CO. and BARBARA	:	of Appeal from the
FAGGINS,	:	Superior Court
	:	
Petitioners.	:	

ORDER

PER CURIAM:

AND NOW, this **16th** day of **April, 1996**, the Petition for Allowance of Appeal is hereby **DENIED.**

True Copy From the Record
Attest: April 16, 1996

Patricia Johnson
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

THE PHILADELPHIA TRIBUNE
Voice of the Black Community Since 1884

West Phila. dentist charged with fraud

By Barbara Faggins
(Tribune Staff Worker)

Dr. Glenn Arthur Brown, a recent graduate of the University of Pennsylvania Dental School, faces criminal charges of welfare fraud, accused by the Auditor General's office of submitting 19 false claims to the Department of Public Welfare for reimbursement over a six-month period.

Brown, according to the charges, was paid $1,881 for 18 of the 19 claims submitted. An additional claim was rejected by the Welfare Department because it was not recorded on the patient's medical chart. The case has been referred to the Medicaid Fraud Control Section of the Attorney General's office. Brown's license could be in jeopardy and he could be fined for unethical conduct in the field of medicine.

While a dentist at the Mercy Haverford Medical Center, 52nd and Haverford Avenue, Brown allegedly submitted 239 claims between July, 1984, and January, 1985. Sixty of the cases were reviewed by the Bureau of Investigations.

Moreover, said David Kirkpatrick, director of communications, Brown, of West Philadelphia, required a Medical Assistance patient to pay for services rendered and was submitting false invoices to the Department of Public Welfare for reimbursement.

"I have no knowledge of this, and no one else has informed me. I just graduated from the University of Pennsylvania three years ago. I am not going to steal from the state or anybody else. My practice is over 50 percent Medical Assistance. It doesn't make sense to do that," claimed Brown, who

established his own practice on Locust Street near 52nd, last April. "I am totally surprised at this. I didn't have any employees there (Mercy Haverford Medical Center). I didn't charge patients. All billing was done by his (Dr. Perry Fannell's) staff."

Brown, who is in his 20's, said, "Until I have more information regarding this, I will have nothing more to say. I can't really say what I am going to do at this point. I don't know what this is all about. I have never been notified. They have not notified me that I've done something wrong.

But Margaret Rivera, a former employee at the center, contended that Brown reviewed all billings and signed them before they went out for reimbursement.

"We did the billing, and he did billing, too. He always looked at the bills. He signed everything before it went out." Currently Rivera works as a secretary to Dr. Fannell, a dentist and associate of Brown. They both worked at the center before setting up their respective practices in West Philadelphia.

Despite Brown's claim that he had no knowledge of the inquiry. Kirkpatrick said that the dentist was fully aware of the investigation. Kirkpatrick, in fact, said the investigation was conducted over a one-year period. Brown, he said, engaged in unscrupulous conduct at best.

"We stand by our investigation. I did talk to Dr. Brown during an 'exit interview.' This is done with the parties involved. That was done with Dr. Brown," Kirkpatrick explained. "He thought there would be a followup to the investigation."

Mike Moyer, spokesman for the Department of Public Welfare, said the case is being fully reviewed by the department.

"We are reviewing the information. At this point it is still under review. I have nothing to say at this time," Moyer said.

Commonwealth of Pennsylvania
Department of the Auditor General
Harrisburg, Pennsylvania 17120

Don Bailey
Auditor General

Contact:

Ben Livingood
Press Secretary
(717)787-1381

Dave Kirkpatrick
Communications Director
(717)787-1387

IMMEDIATE RELEASE

HARRISBURG -- State Auditor General Don Bailey today recommended that the state Attorney General's Office look into the activities of Dr. Glenn Arthur Brown, a Philadelphia dentist who submitted 19 false claims to the Medical Assistance Program of the Department of Public Welfare.

The investigation was a result of an anonymous call received by the auditor general's Taxpayer Information Program (TIP).

"The complainant told us, and we confirmed, "said

Bailey, "that Dr. Glenn Arthur Brown of the Mercy Haverford Medical Center required a Medical Assistance recipient to pay for services rendered and was submitting false invoices to the Department of Public Welfare."

The department's Bureau of Investigations reviewed 60 of the 239 claims that Brown submitted to the Department of Public Welfare between July 1984 and January 1985.

Brown received $1,881 for 18 false claims. The Department of Public Welfare rejected one claim because it was not recorded on the patient's medical chart.

In addition to the Department of the Attorney General, Bailey has referred the case to the Department of Public Welfare and the Philadelphia District Attorney.

TIP was established in 1977 to receive calls on the suspected misuse of commonwealth tax dollars. Since the program began, TIP has uncovered more than $14 million of wasted, misspent or fraudulently-obtained state funds.

Bailey asked anyone having information on suspected

welfare fraud or other misuse of state funds to call TIP's toll-free hot line at 1-800-692-7391 or write to Auditor General Don Bailey, TIP, 319 Finance Building, Harrisburg, Pennsylvania, 17120.